

## CMS România: New EU rules speed up confiscation and freezing of criminal assets

**On the 19 December 2020 EU Regulation 2018/1805 on the mutual recognition of freezing and confiscation orders went into force, applying to all freezing and confiscation certificates and representing the first mutually recognised regulation for criminal matters in the EU.**

This Regulation replaced Framework Decisions 2003/577/JHA on freezing property and 2006/783/JHA on confiscation orders.

Based on the general principle of mutual recognition, the Regulation ensures that all judicial decisions in criminal matters taken by one EU member state will be directly recognised and enforced by another EU member state.

The Regulation, however, sets out a limited number of grounds for non-recognition and non-execution, which in some cases differ from the former regime. The new rules introduce a list of offences for which dual criminality is not required as well as the referral to fundamental rights as an exceptional ground for refusal.

The wide scope of confiscations that the Regulation covers includes value-based confiscation, non-conviction-based confiscation, extended confiscation and third-party confiscation, as long as criminal-law guarantees are provided. Certain types of preventive confiscation are also possible, provided there is a link to a criminal offence. According to recital (13) of the Regulation, these rules do not apply to any freezing and confiscation orders issued in civil and administrative proceedings.

In order to speed up procedures, the Regulation introduces tighter deadlines and a standard certificate for freezing and confiscation orders. The new rules also include a deadline of 45 days for the recognition of a confiscation order and in urgent cases a 48-hour deadline for recognition and a further 48 hours for execution of freezing orders.

These time limits can be postponed only under strict conditions outlined in the Regulation.

Another major change is a new regime for restitution and compensation of victims of crime in cross-border cases, which is the first time such rights have been recognized at the EU level. In addition, the rights afforded victims by these rules take priority over any interests of the issuing and executing states. (The preceding framework decisions listed above did not contain provision for victims).

In another significant improvement, the new Regulation addresses the need for victims to be compensated for damages or to receive restitution for stolen assets from whatever EU state where the property was confiscated. In specific cases, compensation and restitution is now easier. Although the possibility for this previously existed in several EU member states, until now there were no specific provisions for cross-border confiscation cases.

According to Europol estimates, only about 2% of criminal proceeds in the EU are frozen and only 1% are confiscated, which amounts to about EUR 1.2 billion.

*For more information on freezing or confiscating criminal assets or general advice on criminal defence issues in Romania, contact your CMS partner or local CMS experts [Mihai Jiganie-Serban](#) and [Anca Elena Ion](#).*